with a railroad company to erect and maintain a telegraph line along its right of way, could be deprived of that right by a state statute which attempted to confer exclusive privileges upon another company; and the court held it could not be deprived of such right. In the *Ann Arbor* case the only question was the right to the specific performance of a contract between the telegraph company and the railroad company, by which the former was granted the right to use the latter's right of way; and the court expressly held that the bill was not so framed as to raise the question of the right of eminent domain. In each of these cases the court said that the Act of 1866 did not confer upon telegraph companies "the right to enter upon private property without the consent of the owner, and erect the necessary structures for their business; but it does provide that, wherever the consent of the owner is obtained, no state legislature shall prevent the occupation of post roads for telegraph purposes by such corporations as are willing to avail themselves of its privileges." But there is not a word in the Act of 1866 relating to the consent of the owner, nor did the question in either of these cases concern such consent. Of course the court is free to decide as it sees fit, but it hardly strengthens its position to attempt to base a decision on authorities which are not in point.

The chief purpose of the Act of 1866, as stated in the case of *United States* v. *Union Pacific Railroad Co.*, 160 U. S. 1, was to give the country the benefit of competition in the business of communication by telegraph, and to prevent any legislature, by statute, or any railroad company, by contract, from excluding any telegraph company from using the railroad right of way if it brought itself within the act. And yet, as Mr. JUSTICE HARLAN points out, the present decision gives the railroad power to do by mere inaction what it could not lawfully do by contract, and permits a railroad company to grant a monopoly while the state government cannot do so, and to invest a single telegraph company with the exclusive right to operate a telegraph system through the region where it runs. The legitimate outcome would seem to be the control by the railroads of the telegraph business, thus bringing under their power one more of the agencies upon which the industrial life of the nation depends.

THE NEED OF UNIFORM LAWS GOVERNING "CONDITIONAL SALES."—The almost hopeless confusion in the cases regarding so-called conditional sales and the number and bewildering variety of constructions put by courts of different states upon these contracts practically identical in form and designed to accomplish the same purpose, afford a striking instance of the need of uniform legislation upon commercial subjects. A recent case in which the matter is carefully discussed is *Freed Furniture, Etc., Co.* v. *Sorenson* (1905) Utah, 79 Pac. Rep. 564. Plaintiff and defendant had both sold and delivered furniture on the "installment plan" to one Fairchild. Fairchild executed and delivered to plaintiff notes specifying the amounts and dates of the installment payments to be made, reciting among other things that the notes were given for the furniture "this day sold to" said Fairchild, and that it was agreed that the "ownership, title and right of possession" of said property should

not pass from plaintiff to said Fairchild until the notes had been paid in full, and that upon default by the maker in respect of any of the terms of the contract the plaintiff might take possession and sell said goods, and from the proceeds pay the balance due on the notes, "holding the residue, if any, subject to the disposal of the maker" of said notes. These notes and contracts were not recorded. Subsequently Fairchild executed chattel mortgages covering all of this furniture to secure his debt to defendant. These mortgages were duly recorded and on default in payment thereof, defendant took possession of the furniture, and caused it to be sold at auction, and purchased it at such sale. Plaintiff brought this action to recover the furniture specified in his notes. The case turned on the question as to whether, notwithstanding the fact that the parties described the transaction as a sale, with title expressly reserved to the vendor, it was not in legal effect an absolute sale with mortgage back. The argument in favor of this view was based upon that clause in the contract whereby the purchaser agreed *unconditionally* to pay the full price, and upon the stipulation permitting the vendor, in default of payment, to take possession of and sell the goods, applying the proceeds to the reduction of the amount due and "holding the residue if any there shall be subject to the disposal of" the vendee. Had this contention been allowed, the title of defendant who had recorded his mortgage must have been held paramount, inasmuch as the plaintiff's contract had not been recorded in accordance with the chattel mortgage statute. The Supreme Court, however, sustained the ruling of the trial court to the effect that the transaction was to be construed according to the "ruling intention of the parties" (*Heryford* v. *Davis,* 102 U. S. 235, 26 L. Ed. 160) as determined by the contract as a whole and not by detached provisions read alone, and that so construed the transaction was a conditional sale and valid; and judgment for the plaintiff was affirmed.

This is in accordance with early common law doctrine, *Mires* v. *Solebay,* 2 Mod. Rep. 242, and the clear weight of recent authority. *Lippincott* v. *Rich,* 19 Utah 140, 56 Pac. 806; *Van Allen* v. *Francis,* 123 Cal. 474, 56 Pac. Rep. 339; *Perkins* v. *Mettler,* 126 Cal. 100, 58 Pac. 384; *Russell* v. *Harkness,* 4 Utah, 197, 7 Pac. Rep. 865, affirmed as *Harkness* v. *Russell,* 118 U. S. 663, 7 Sup. Ct. Rep. 51. And this rule is generally applied to sustain the conditional vendor's title as against the vendee's attaching creditors; *Bean* v. *Edge,* 84 N. Y. 510; *Perkins* v. *Mettler,* 126 Cal. 100, 58 Pac. Rep. 384; *Nichols* v. *Ashton,* 155 Mass. 205, 29 N. E. 519; the vendee's distraining landlord; *Tufts* v. *Stone,* 70 Miss. 54, 11 S. Rep. 792, and, in the absence of conflicting statute, quite generally, even, as against the vendee's bona fide purchasers. *Cottrell* v. *Carter,* 173 Mass. 155, 53 N. E. Rep. 375; *Lansing Iron Works* v. *Wilbury,* 111 Mich. 413, 69 N. W. Rep. 667. See *Harkness* v. *Russell, supra,* and MECHEM ON SALES, § 599, where a large number of cases is collected.

Notwithstanding the weight of authority by which this rule is upheld, and its logical development from the early common law rule, that generally the parties may determine by agreement between themselves as to when the title to specific or ascertainable property shall pass, it may well be doubted whether as applied to bona fide purchasers it is based upon reason or justice. It has been squarely repudiated by the courts of Illinois. *Murch* v. *Wright,*

46 Ill. 487; *Hervey* v. *Rhode Island Locomotive Works,* 93 U. S. 664. And in *Andrews* v. *Colorado Savings Bank,* 20 Col. 313, 36 Pac. Rep. 902, under an unrecorded contract somewhat similar to those in the principal case, the title of the vendor was held not good as against that acquired by a chattel mortgagee. In Pennsylvania, also, contracts of the kind in question, unless put in the form of bailment with option to the bailee to purchase (*Rowe* v. *Sharpe,* 51 Pa. St. 26) would not establish title in the vendee, good as against creditors and innocent purchasers. *Haak* v. *Lindermann,* 64 Pa. St. 499; *Morgan-Gardner El. Co.* v. *Brown,* 193 Pa. St. 351. *Aultman* v. *Silhœ,* 85 Wis. 359, 55 N. W. Rep. 711, and *Heryford* v. *Davis,* 102 U. S. 235, sometimes cited as also holding contrary to the general rule, are clearly distinguishable.

Finally, in more than half of our states there are statutes regulating this matter, most of which provide that in order to prevent the creation of superior rights in creditors of, or purchases from, the conditional vendee, the vendor must record his contract. See MECHEM ON SALES, § 603 and notes and MORRILL ON CONDITIONAL SALES, where the substance of these statutes is given. But there is an unfortunate lack of uniformity in the detail of these statutes and in the construction put upon them in different jurisdictions.

The whole situation, then, regarding conditional sales is extremely unsatisfactory. In states where the prevailing judicial rule is recognized, persons dealing with conditional vendees can never be secure, while manufacturers and merchants doing an interstate business are compelled to steer an uncertain course between a bewildering and shifting variety of judicial decisions and statutes, in which a misstep may mean the loss of the entire subject-matter of the sale. It would seem that a provision, that unless the contract be in writing, and acknowledged and recorded in the manner usually provided for chattel mortgages, it shall be invalid as against creditors and bona fide purchasers, might well be added to the draft for a uniform "Sale of Goods Act" now before the Commissioners on Uniform State Laws. This whole subject is fully and clearly treated in MECHEM ON SALES, §§ 558-650.

JURISDICTION OF EQUITY OVER VOID INSTRUMENTS.—That before a party is entitled to equitable protection from a claim against which he has a good defense at law, he must show his legal remedies to be inadequate, is a familiar and fundamental principle. Court decisions show that its application is not always easy.

In the recent case of *Ritterhoff* v. *Puget Sound Nat. Bank of Seattle* (1905), — Wash. —, 79 Pac. Rep. 601, it was sought to enjoin the defendant from transferring or asserting demand upon a pretended promissory note in its possession, to which the plaintiffs' names were forged. It appeared that demand of payment had been made, that the plaintiffs owned considerable property and that one of them was an invalid. In affirming a decree granting the injunction the court said, that, though there was a complete legal defense to the note, and testimony could be perpetuated under the statutes, yet this remedy was not so adequate as to bar equitable relief.